Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

CC Docket #96-98

In the Matter of	)	
	)	
Request by the Association for Local	)	
Telecommunications ("ALTS") for	)	
Clarification of the Commission's Rules	)	CCB/CPD 97-30
Regarding Reciprocal Compensation for	)	
Information Service Provider Traffic	)	

REPLY COMMENTS OF AT&T CORP.

Pursuant to the Public Notice released on July 2, 1997, AT&T Corp. ("AT&T") respectfully submits its Reply Comments on the letter filed by the Association for Local Telecommunications ("ALTS") requesting expedited clarification of the Commission's rules regarding the rights of a competitive local exchange carrier ("CLEC") to receive reciprocal compensation pursuant to section 251(b)(5) of the Telecommunications Act of 1996 for the transport and termination of traffic to CLEC subscribers that are information service providers ("ISPs").[1]

The Commenters overwhelmingly support the position that the Commission has the authority to require Internet traffic to be subject to reciprocal compensation, although for the most part they premise this position on the notion that calls to Internet providers' local switches are "local" in nature.[2] While these Commenters reach the correct conclusion, they do so for the wrong reason.

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1 A list of Commenters appears as Appendix A.

2 See, e.g., ACC at 4-5; Adelphia at 20-21; AirTouch at 3-4; AOL at 7-9; Cox at 9-11; Focal at 5-7; US Xchange at 3-6; Winstar at 3-5.

When the Commission originally exempted Internet Service Providers ("ISPs") from paying interstate access charges in 1983, it did so with full knowledge that ISPs use exchange access facilities to provide interstate services; hence an exemption was required to remove ISPs from the federal access charge rules.[3] The Commission has consistently acknowledged that its inclusion of enhanced service providers within the definition of "end users" under the access charge rules meant that those users would be subject to local services and fees.[4]

For purposes of cost recovery, therefore, the applicability of reciprocal compensation arrangements to interstate ISP traffic makes sense. This dual structure for the recovery of essentially the same network functions was explicitly recognized by the Commission in its Local Competition Order, where the Commission held that reciprocal

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[3] MTS and WATS Market Structure, Memorandum Report and Order, 97 F.C.C. 2d 682, 715 (1983) ("MTS Market Structure Order") ("Other users who employ exchange service for jurisdictionally interstate communications, including private firms, enhanced service providers, and sharers, who have been paying the generally much lower business service rates, would experience severe rate impacts were we immediately to assess carrier access charges upon them.") (emphasis supplied); Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, Notice of Proposed Rulemaking, CC Docket No. 87-215, 2 FCC Rcd 4305, 4306 (1987) ("Enhanced service providers, like facilities-based interexchange carriers and resellers, use the local network to provide interstate services."). The ISPs themselves freely acknowledge the overwhelmingly interstate nature of the communications that they provide. See, e.g., CompuServe at 4 (". . . CompuServe believes that under well-established precedent the great preponderance of this information services traffic is jurisdictionally interstate as a matter of law. . .").

[4] See, e.g., Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, Order, CC Docket No. 87-215, 3 FCC Rcd 2631, n.8 (1988) ("Under our present rules, enhanced service providers are treated as end users for purposes of applying access charges. . . . Therefore, enhanced service providers generally pay local business rates and interstate subscriber line charges for their switched access connections to local exchange company central offices.").

compensation can provide the mechanism for LEC recovery of the costs of transport and local termination of calls to ISPs' switches where interstate access charges do not apply.[5]

It is thus a legitimate exercise of the Commission's authority to govern the terms of cost recovery for interstate access services provided to ISPs by requiring that LECs be compensated for transport and termination of traffic to ISP switches in accordance with their existing reciprocal compensation arrangements. As Hyperion notes (at 6), "[although] the Commission has distinguished between the pricing standards for terminating local calls and the access charges for interexchange calls, it has not failed to address how ISP traffic is to be considered." It is to be treated as interstate traffic, but priced at intrastate rates.[6]

The recent decision by the Eighth Circuit Court of Appeals[7] does not disturb the Commission's authority to require that Internet traffic be subject to local reciprocal compensation arrangements. To the contrary, that decision confirmed that the

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5 In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98 and 95-185, First Report and Order, released August 8, 1996, ¶¶ 1033-1034 ("Local Competition Order"). See also CompuServe at 4-5.

6 Indeed, KMC (at 3) notes that the ILECs' position that ISP traffic is not "local" for purposes of reciprocal compensation "stretch[es] the Commission's ruling in the Local Competition Order too far. The reason for the Commission's ruling was to preserve the integrity of the access charge system. The Commission explained that '[t]he Act preserves the legal distinctions between charges for transport and termination of local traffic and interstate and intrastate access charges for terminating long-distance traffic.' This reason does not apply to ISP traffic, since such traffic is not subject to interexchange access charges." (Citations omitted.)

7 Iowa Utils. Bd. v. FCC, Nos. 96-3321, et seq., 1997 U.S. App. LEXIS 18183 (8th Cir. 1997).

Commission has exclusive jurisdiction over interstate communications under the Communications Act.[8] Although the Eighth Circuit struck down the Commission's rules governing the pricing of local intrastate telephone services (including the terms of reciprocal compensation for the transport and termination of local exchange traffic),[9] it did not -- nor could it -- restrict or eliminate the authority of the Commission to determine the compensation rules for interstate communications services -- which include Internet services.

Thus, the Commission's rulings that ISPs should be "treated as end users" and, as a result, ISP traffic should be treated as local traffic remain applicable and enforceable. To the extent that, in the wake of the Eighth Circuit decision, compensation rules for local traffic are to be determined by state commissions -- directly by rule or indirectly by approval of interconnection agreements -- it is the stated intent of the Commission that Internet traffic be treated at this time in like fashion. No state commission or individual ILEC can unilaterally reverse or eliminate that requirement,[10] and the Eighth Circuit decision did nothing to erode the Commission's jurisdiction over the pricing of such interstate traffic.[11]

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8 Id. at *15.

9 Id. at *34.

10 In fact, at least five state regulatory agencies have decided that traffic to ISPs should be subject to reciprocal compensation arrangements under Interconnection Agreements. See WorldCom at 11-12.

11 For this reason, NYSDPS (at 2-4) is wrong to suggest that the ALTS petition improperly asks the Commission to assert exclusive jurisdiction over "local matters." The Commission clearly has jurisdiction to determine the treatment of interstate communications, including Internet traffic.

The Comments further confirm the serious anticompetitive effects that will result if ILECs are permitted to deny their CLEC competitors fair compensation for the transport and termination of Internet traffic over their networks. For example, Cox (at 3-11) describes in detail the "serious and widespread" problem arising of ILECs defying the interconnection agreements that they have negotiated with CLECs and unilaterally deciding not to provide reciprocal compensation for ISP traffic under those agreements. This phenomenon is confirmed in the Comments of numerous other CLECs,[12] and stands in stunning counterpoint to the ILECs' own treatment of ISP traffic that terminates on their local networks.[13] Clarification that the Commission's rules governing interstate communications services requires the treatment of Internet traffic as eligible for reciprocal compensation will put to rest, once and for all, the blatant attempts of the ILECs to competitively disadvantage emerging competitors and their potential customers.

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[12] See, e.g., ACC at 2-7; Brooks at 2-4; Business Telecom at 1-5; Hyperion at 2; Winstar at 2-3; WorldCom at 3-4.

[13] The Comments establish that the ILECs unfailingly treat such traffic as "local" when the ISPs are their direct customers, by permitting the ISPs to purchase local services and classifying such traffic as intrastate for separations purposes (see, e.g., Hyperion at 7; KMC at 6; TCG at 7; Winstar at 5). The Comments further conclusively show that the ILECs treat their own Internet traffic as local under the Commission's Computer Inquiry rules and for purposes of Section 272 compliance. See, e.g., Cox at 4, n.7 and Exhibit 2 (describing Bell Atlantic's representations, in the context of its CEI plan for Internet Access Service, that its own Internet Access Service is a local service provided via local business lines); see also AOL at 9; TCG at 7-8; WorldCom at 10-11.

WHEREFORE, for the reasons stated above, AT&T respectfully requests that the Commission declare that CLECs are eligible for reciprocal compensation for the transport and termination of traffic to their ISP subscribers.

Respectfully submitted,

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Attachment A

Summary of NERA's Analytical Method

1. First, NERA obtained records of approximately 1.1 million calls placed using NYNEX's approximately 7,000 Gemini payphones between August 9 and September 4, 1996. Unlike NYNEX's more than 117,000 "dumb" payphones, Gemini payphone sets record the call date; the time of day the receiver is taken off-hook by the caller; all digits dialed; a count of coins deposited, if any; and the time of day the phone was placed back on-hook.

2. Next, NERA obtained AT&T message records, in EMI format, for the approximately 174,000 AT&T sent paid messages originating from all NYNEX pay phones during the study period. The EMI records contained the originating number, terminating number, call date and time, conversation minutes to the nearest minute, and AT&T's count of coins put in the pay phone, based upon the tones received at AT&T's recording switch.

3. NERA then tried to match the Gemini message records with the 174,000 AT&T message records. This was necessary because the mere existence of a Gemini message record is not sufficient to establish that a billable call (i.e., a call that was completed and for which payment must be collected) was placed. NERA reports that it was able to "match" 3,107 of the calls recorded by Gemini pay phones and carried by AT&T to AT&T message records.[2] The "matched" call records came from 1,286 of the approximately 7,000 Gemini pay phones. According to NERA, 584 of the 3,107 matched messages were "fraudulent," because the Gemini record showed no coins collected while the AT&T record showed that coins had been deposited in the payphone.

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[1] NERA apparently used message records from Gemini payphones because these are the only NYNEX payphones that produce message records.

[2] NERA does not indicate how many of the total messages recorded by the Gemini phones were carried by AT&T, or what percentage were AT&T sent-paid (i.e. coin) calls.

4. NERA then fitted a "fraudulent call model" to the 3,107 matched message records.[3] The model, which was fitted using logistic regression techniques, attempts to predict the probability that a call from a specific payphone is fraudulent based upon a number of characteristics, including geography (originating and terminating area codes), the cost and duration of the call, and rate period. Using the data from the model, NERA then generated estimates of the probability that each of the 174,000 AT&T EMI messages for the sample period was fraudulent.

5. Next, NERA estimated the total fraud losses on all AT&T sent-paid calls during the study month by taking the AT&T-identified revenue for each of the 174,000 AT&T EMI records and multiplying that amount by the NERA-derived probability that a call from the originating payphone was fraudulent.

6. Having calculated what it believed was the fraud on AT&T calls for the study month, NERA then fitted a "monthly fraud model" to estimate the fraud rate for 33,880 of the 48,327 NYNEX pay phones with AT&T charges during the study period. This model uses geography (NPA where the pay phone is located), non-AT&T charges, and AT&T charges to explain the estimated fraud rate produced using the fraudulent call model and the 174,000 AT&T EMI messages for the study period.

7. Finally, NERA estimated fraud losses on AT&T calls for prior months by evaluating the monthly fraud model for each NYNEX payphone and rolling up the total for all NYNEX payphones.

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[3] In terms of statistical analysis, "fitting" an equation to a data set means using some form of regression analysis (a statistical procedure) to estimate values for the equation's coefficients that make the equation best fit (or play back) the data to predict an outcome.

APPENDIX A

LIST OF COMMENTERS
CCB/CPD 97-30

ACC Corp. ("ACC")
Adelphia Communications et al.
AirTouch Paging ("AirTouch")
America Online ("AOL")
American Communications Services, Inc. ("ACSI")
Ameritech
AT&T Corp.
Brooks Fiber Properties, Inc. ("Brooks Fiber")
Business Telecom, Inc.
Cincinnati Bell Telephone Company ("CBT")
Commercial Internet Exchange Association ("CIX")
CompuServe Incorporated
Cox Communications, Inc. ("Cox")
Dobson Wireless, Inc. ("Dobson")
Focal Communications, Inc. ("Focal")
GST Telecom, Inc. ("GST")
Hyperion Telecommunications, Inc. ("Hyperion")
Intermedia Communications, Inc. ("Intermedia")
KMC Telecom, Inc. ("KMC")
MCI Telecommunications Corporation ("MCI")
New York State Department of Public Service ("NYSDPS")
North County Communications Corp.
RCN Telecom Services, Inc. ("RCN")
Southern New England Telephone Company ("SNET")
SpectraNet International ("SNI")
Sprint Corporation ("Sprint")
Teleport Communications Group, Inc. ("TCG")
United States Telephone Association ("USTA") & Member Companies
US Xchange, L.L.C. ("USX")
Vanguard Cellular Systems, Inc. ("Vanguard")
WinStar Communications, Inc. ("WinStar")
WorldCom, Inc.
XCOM Technologies, Inc. ("XCOM")

CERTIFICATE OF SERVICE

I, Rena Martens, do hereby certify that on this 31st day of July, 1997, a copy of the foregoing "Reply Comments of AT&T Corp." was served by U.S. first class mail, postage prepaid, to the parties listed on the attached Service List.

/s/ Rena Martens
Rena Martens

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